

The A.C.L.U.'s Increasing Dissent From Within

By DAVID BURNHAM

Special to The New York Times

WASHINGTON, Aug. 13 — A few weeks ago, the southern California affiliate of the American Civil Liberties Union challenged the staff of the A.C.L.U.'s Washington office, saying that a recent decision by the staff would increase the risk of illegal abuses by the Central Intelligence Agency.

The subject of the California group's anger was a move by the Washington office to support legislation exempting some Central Intelligence Agency files from the requirements of the Freedom of Information Act.

The affiliate's expression of dissatisfaction with the Washington office was not new or unusual. Increasingly, some A.C.L.U. members are saying that decisions by the office here reflect a compromise of principles and ideals by the hierarchy of the 64-year-old organization.

Defenders of the Washington office do not deny a shift has taken place. They argue, however, that it is a shift in strategy, not principle, forced on the A.C.L.U. by the shift to the right

'The hard truth we must face is co-option and the legitimating of otherwise indefensible acts.'

—Mae Churchill

that has occurred on the Supreme Court in recent few years. Where once the civil liberties group could rely on a liberal Court for the remedies it sought, they say, it and other liberal organizations must now turn to Congress, an institution more liberal than the current Court but nevertheless a place where a certain amount of give and take and compromise is required.

Mae Churchill, a long-time critic who was a leader in the California affiliate's formal protest, is not persuaded by this explanation. "The New York and Washington offices of the A.C.L.U. seem to have become a part of the establishment," she said. "They have become comfortable with the Washington bureaucrats."

"The A.C.L.U. used to be known for



its defense of the Bill of Rights," she continued. "It is that defense which is being compromised by entering into negotiations with an Administration, like the current one, which is reactionary. The hard truth we must face is that in today's political scene the net effect of participating in the formulation of laws affecting civil liberties is co-option and the legitimating of otherwise indefensible acts."

Mrs. Churchill added that several recent decisions of the A.C.L.U. were reminiscent of the early 1950's when the organization seemingly lost its commitment to civil liberties in the intense anti-Communist sentiments of the McCarthy period.

'A Fair Amount of Dissent'

Mark Lynch, a litigating attorney for the organization in Washington, disagrees with Mrs. Churchill. "We always had a fair amount of dissent," he said. "But the conflicts within our organization seem to have increased recently because the change in direction of the Supreme Court has forced us to change our tactics."

Mr. Lynch said that in the years of Chief Justice Earl Warren, the A.C.L.U. almost always could rely upon the Federal courts to defend the civil rights of individuals, a political

reality that allowed the organization to take more absolute positions in its legal briefs.

"Now the Court has become much more conservative," he said. "This means we must turn to Congress in our efforts to defend civil liberties. Working the legislative arena requires an entirely different approach than the courts. When you are talking with a House member or senator, you have to be ready to negotiate and compromise; absolute positions of

principle cannot always be maintained."

Jerry F. Berman, legislative counsel in the A.C.L.U.'s Washington office, denied that the organization was moving to the right. "We stand four square behind all the rights of free speech and privacy," he said, "and have worked with House and Senate members to prevent Congress from passing seriously troublesome legislation on issues like school prayer and to limit the C.I.A.-backed proposal to give it a total exemption from the Freedom of Information Act."

He said the recent trends in the Supreme Court were "ominous" for civil liberties. "Despite the many years when the Court was our principal ally," he said, "since the era of Chief Justice Warren Burger and Justice William Rehnquist, Congress has become far more sensitive to civil liberties."

'Often a Very Difficult Call'

Ramona Ripston, the director of the A.C.L.U.'s southern California affiliate, said she could understand both sides of the dispute. "Anyone who has worked in the legislature knows there has to be some give and take," she said. "The question is what kind of compromise. There have been some decisions made at the national level which we would not support. But this often is a very difficult call."

There have been many separate skirmishes in the continuing war to define the correct position for the nation's oldest and largest civil liberties organization.

Several years ago, for example, Mrs. Churchill and her allies in Los Angeles opposed the A.C.L.U.'s involvement in the drafting of a law that requires the Government to ob-

tain a secret warrant from a special and largely secret Federal court when it wants to conduct electronic eavesdropping device on a spy. The organization has always maintained that all wiretaps, even those with a warrant, violated the right, under the Constitution's Fourth Amendment, to be free from unreasonable search.

A more recent example of the conflicts within the A.C.L.U. concerned legislation designed to set Federal standards for regulation of the cable television industry. Mr. Berman, in his role as the organization's legislative counsel, worked hard with a number of industry lobbyists to gain approval in the House Energy and Commerce Committee for an amendment that would sharply limit the right of law-enforcement agencies to obtain information about individual subscribers. Several days later, however, the A.C.L.U. put out a press release attacking the overall bill because of other aspects of it.

Strident Dissension

But spokesmen from both camps agree that the struggle over the C.I.A.'s responsibilities under the Freedom of Information Act best illustrates the increasingly strident dissension within the A.C.L.U.

The act requires Government agencies to make most records available to citizens and corporations that ask for them. Most C.I.A. information is exempt, although the agency is required to search all its files when a request is made for certain data. The proposed legislation would allow the agency to omit one category of files when it makes a search.

The defenders of the A.C.L.U.'s position on the issue contend that the pending legislation will actually shorten the time it takes the C.I.A. to respond to requests because it more closely defines the files the agency must comb. These defenders also say that if the civil liberties group does not support this proposal, alternative legislation might be adopted that would totally remove the intelligence agency from requirements of the information act.

Critics argue, on the other hand, that the pending legislation already would provide the C.I.A. what amounts to a total exemption from the law, "permitting the agency to cover up illegal domestic spying and other wrongdoing."

This particular challenge was serious enough that Morton Halperin, director of the A.C.L.U.'s Center for National Security Studies, flew to Los Angeles to defend the decision before a meeting of the California affiliate. Despite Mr. Halperin's effort, the executive committee of the affiliate voted to oppose the position of the Washington office and then informed a number of members of Congress of its opposition to the legislation.

This action, in turn, was considered by the national board of the A.C.L.U. It approved a resolution saying the Washington office's decision in the C.I.A. matter was within the approved policy of the A.C.L.U. The Californians were also reminded of a long-standing rule forbidding affiliates from having contact with members of Congress outside their areas-